

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 217, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES, DEALERS AND SALESMEN LICENSING; AMENDING SECTION 49-1614, IDAHO CODE, TO REVISE TERMINOLOGY, TO DELETE PROVISIONS RELATING TO THE TERMINATION, NONRENEWAL OR CANCELLATION OF CERTAIN FRANCHISES, TO DELETE PROVISIONS RELATING TO FAIR AND REASONABLE COMPENSATION, TO DELETE PROVISIONS RELATING TO CERTAIN RENTAL PAYMENTS, TO PROVIDE THAT A MANUFACTURER SHALL NOT CANCEL, TERMINATE OR FAIL TO RENEW CERTAIN FRANCHISE AGREEMENTS UNLESS CERTAIN REQUIREMENTS ARE SATISFIED, TO PROVIDE PROVISIONS RELATING TO THE TERMINATION, CANCELLATION OR NONRENEWAL OF CERTAIN FRANCHISE AGREEMENTS, TO PROVIDE PROVISIONS RELATING TO THE REPURCHASE OF CERTAIN ITEMS, TO PROVIDE FOR CERTAIN COMPENSATION, TO PROVIDE PROVISIONS RELATING TO REPURCHASE WITHIN A CERTAIN TIME PERIOD, TO PROVIDE PROVISIONS RELATING TO A SECURITY INTEREST, TO PROVIDE EXCEPTIONS FOR THE APPLICATION OF LAW, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR CERTAIN REIMBURSEMENTS, TO PROVIDE FOR APPLICATION OF LAW AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1614, Idaho Code, be, and the same is hereby amended to read as follows:

49-1614. TERMINATION, CANCELLATION OR NONRENEWAL. (1) Notwithstanding the terms, provisions or conditions of any franchise agreement, or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the notice requirement of subsection (2) of this section, and has good cause for cancellation, termination or nonrenewal.

(2) Notwithstanding the terms, provisions or conditions of any franchise agreement prior to the termination, cancellation or nonrenewal of any franchise agreement, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the department and the dealer:

(a) In the manner described in ~~paragraph~~ subsection (3)(b) of this subsection; and

(b) Not less than ninety (90) days prior to the effective date of termination, cancellation or nonrenewal; or

(c) Not less than fifteen (15) days prior to the effective date of termination, cancellation or nonrenewal with respect to any of the following:

~~1.~~(i) Insolvency of the dealership, or filing of any petition by or against the dealership under any bankruptcy or receivership law;

2-(ii) Failure of the dealership to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

3-(iii) Conviction of the dealer, or any owner or his operator, resulting in imprisonment exceeding thirty (30) days;

4-(iv) Revocation of any license which the dealer is required to have to operate a dealership; and

(d) Not less than one hundred eighty (180) days prior to the effective date of termination or cancellation, where the manufacturer is discontinuing the sale of the product line.

(3) Notification under this section shall be in writing, by certified mail or personally delivered to the dealer, and shall contain a statement of intention to terminate, cancel or not to renew the franchise agreement, and a statement of the reasons for and the date on which termination, cancellation or nonrenewal takes effect.

(4) Notwithstanding the terms, provisions or conditions of any franchise agreement or of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when there is a failure by the dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship, and provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days prior to termination, cancellation or nonrenewal. A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

(5) Notwithstanding any franchise agreement, the following shall not constitute good cause for a termination, cancellation or nonrenewal of a franchise agreement: the fact that the dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of motor vehicles; or that the dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor which existed prior to January 1, 1997; or is approved in writing by the manufacturer.

(6) The manufacturer shall have the burden of proof under this section concerning the issue of good cause, which shall include, but not be limited to, termination, nonrenewal or cancellation of any franchise agreement by the manufacturer for insolvency, license revocation, conviction of a felony, fraud by a dealer or failure by a dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship.

~~(7) (a) Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer, other than the manufacturer of recreational vehicles as defined in section 49-119, Idaho Code, with the exception of van type vehicles converted to recreational use, without good cause, the manufacturer shall pay to the dealer the fair market value of his business as a going concern. On payment, the dealer shall convey his business, free of liens and encumbrances, to the manufacturer, distributor or factory branch.~~

~~(b) Upon the termination, nonrenewal or cancellation of any franchise by a manufacturer of recreational vehicles without good cause, the recreational vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:~~

~~1. New vehicle inventory which has been acquired from the manufacturer;~~

~~2. Supplies and parts which have been acquired from the manufacturer;~~

~~3- Equipment and furnishings, provided the licensee purchased from the manufacturer or its approved source; and~~

~~4. Special tools.~~

~~(8) Fair and reasonable compensation for the above shall be paid by the manufacturer within ninety (90) days of the tender of the property, provided the licensee has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.~~

~~(9) In the event of a termination, cancellation or nonrenewal by the manufacturer under this section except termination, cancellation or nonrenewal by the manufacturer for insolvency, license revocation, conviction of a crime or fraud by a dealer, the manufacturer shall pay a sum equivalent to rent of the unexpired term of the lease or one (1) year rent, whichever is less, if the motor vehicle dealer is leasing its motor vehicle dealership facility from a lessor other than manufacturers or distributors, or a sum equivalent to reasonable rental value of the dealership facility for one (1) year or the reasonable rental value of the facility until facilities are leased, whichever is less, if the motor vehicle dealer owns the motor vehicle dealer facility.~~

~~(10) The rental payment required under subsection (9) of this section is only required to the extent that the facilities were used for the sale and service of the manufacturer's or distributor's product, and only to the extent they are not leased for other purposes. Payment under subsection (9) of this section shall entitle the manufacturers or distributors to possession and use of the facility.~~

(7) Notwithstanding the terms, provisions or conditions of any franchise agreement, other written contract or agreement or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the requirements of this section.

(8) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer any new, undamaged and unused motor vehicles of the current model year and previous model year. Any new and unused motor vehicle repurchased by the manufacturer shall be repurchased at the net cost to the dealer. Net cost means the dealer's cost for a new, undamaged, unsold, and complete motor vehicle of the current model year or any previous model year acquired by the dealer within twelve (12) months of the date of termination and in a dealer's inventory purchased from the manufacturer or acquired from another dealer of the same line make in the ordinary course of business:

(a) Plus any charges by the manufacturer, distributor, or representative for distribution, delivery and taxes;

(b) Plus the dealer's cost of any manufacturer approved accessories added on the vehicle, except only those recreational vehicle accessories that are listed in the manufacturer's wholesale product literature as options for that vehicle shall be repurchased; and

(c) Less all allowances paid to the dealer by the manufacturer, distributor or representative.

(9) (a) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer the following:

(i) Any unused, undamaged, and unsold parts which have been acquired from the manufacturer, provided such parts are currently offered for sale by the manufacturer in its current parts catalog and are in salable condition. Such parts

shall be repurchased by the manufacturer at the current catalog price, less any applicable discount;

(ii) Any supplies, equipment, and furnishings, including manufacturer or line make signs, required by and purchased from the manufacturer or its approved source within three (3) years of the date of termination, cancellation, or nonrenewal; and

(iii) Any special tools or other equipment purchased from the manufacturer within three (3) years of the date of termination, cancellation, or nonrenewal.

(b) Except as provided in paragraph (a)(i) of this subsection, compensation shall be the fair market value on the effective date of the termination, cancellation, or nonrenewal.

(10) The repurchase of any item under this section shall be accomplished within ninety (90) days of the effective date of the termination, cancellation, or nonrenewal, provided the dealer has clear title to the inventory and other items, or is able to convey such title to the manufacturer and does convey or transfer title and possession of the inventory and other items to the manufacturer.

(11) If the repurchase of any item under this section is subject to a security interest, the manufacturer may make payment jointly to the dealer and to the holder of the security interest.

(12) This section shall not apply to a nonrenewal or termination that is implemented as a result of the sale of the assets or stock of the motor vehicle dealer.

(13) In the event the manufacturer does not pay the dealer the amounts due under this section and a court of competent jurisdiction finds the manufacturer in violation of this section, the manufacturer shall, in addition to any amounts due, pay the dealer:

(a) Interest on the amount due computed at the rate applicable to a judgment of a court; and

(b) Reasonable attorney's fees and costs.

(14) Within ninety (90) days of the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer for the failure of a dealer to meet sales and service performance obligations or due to elimination, cessation or termination of a line make, the manufacturer shall commence to reimburse the dealer for one (1) year of the dealer's cost to rent or lease the dealership's facility or location or for the unexpired term of the lease or rental period, whichever is less, or, if the dealer owns the facility or location, for the equivalent of one (1) year of the reasonable rental value of the facilities or location as determined by an Idaho licensed commercial real estate appraiser. If more than one (1) franchise agreement is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers. However, if a franchise agreement is terminated, canceled, or not renewed but the dealer continues in business at the same location under a different franchise agreement, the reimbursement required by this subsection shall not be required to be paid. In addition, any reimbursement due under this subsection shall be reduced by any amount received by the dealer by virtue of the dealer leasing, subleasing, or selling the facilities or location during the year immediately following the termination, cancellation, or nonrenewal.

(15) All procedures and protections afforded to a motor vehicle dealer under this section shall be available to a recreational vehicle dealer. However, the remedies afforded under this section shall only apply to recreational vehicle dealers where the manufacturer of recreational vehicles as defined in section 49-119, Idaho Code, terminates or fails to renew any franchise agreement without good cause.

1 SECTION 2. An emergency existing therefor, which emergency is hereby declared to
2 exist, this act shall be in full force and effect on and after its passage and approval.